

6 Phil. 458

[G.R. No. 2865. September 21, 1906]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ANICETO ORUGA ET AL.,
DEFENDANTS AND APPELLANTS.**

D E C I S I O N

CARSON, J.:

The decision of the trial court in this case is as follows;

“In this case the accused are charged with *bandolerismo* as defined in Act No. 518, as amended by Act No. 1121, of the Philippine Commission. The complaint alleges ‘that the said accused, on or about the 1st day of April, 1905, and for some time before, in the Province of Batangas, Philippine Islands, did intentionally and maliciously conspire together and with the chiefs of bandits, Julian Montalan, Cornelio Felizardo, Gregorio Flores, and others, and with them did form a band, giving to Aniceto Oruga the title of general, and making Carlos Oruga and Geronimo Rocafor captains, this band consisting of more than three individuals armed with deadly weapons, and with the object of stealing carabaos, horses^ money, rice, and other personal property, and to abduct persons in order to exercise upon them violence and extortion, and to this end the said organization would roam over the highways, woods, mountains, and barrios of said Province of Batangas, and also those of Cavite and La Laguna; that while on one of their said excursions they did attack a group of Government surveyors within the municipality of Calamba, Province of La Laguna, robbing them of their effects, killing one and wounding two others; that the said accused did abduct Arcadio Laurel in Talisay, in the Province of Batangas, and also Dominador Delfino, Mariano Delfino, and Jose Himedes, in Cabuyao, Province of La Laguna, exacting from them ransom for their liberty and robbing them of two watches; that on the road between Lipa and Tanauan, in the Province of Batangas, they did

attack and rob one Joseph G. Hertwick and F. M. Shera of the sum of three hundred dollars gold; that they did kill one Vicente Africa in Luta, in the municipality of Lipa, Province of Batangas, and did also murder one Catalino Macasaet, in the jurisdiction of the same municipality of Lipa, Province of Batangas, all of this being contrary to law. To this charge the accused pleaded not guilty.

“The evidence of the prosecution is that in the month of May or June, 1903, the accused, Aniceto Oruga, after holding a conference with Julian Montalan, a noted leader of bandits, and the two, Oruga and Montalan, later having a further conference with one Sakay, this accused, Aniceto Oruga, was given the title of colonel and proceeded to organize a band, to be under the supreme command of Julian Montalan, who was commanding all the bands then in La Laguna, Cavite, and Batangas Provinces. The accused, Aniceto Oruga, was made chief of all the bands in Batangas Province, afterwards made a general, subject, however, to Montalan’s supervision; that this accused, Oruga, did then proceed to organize a band, operating principally in the Province of Batangas, and sometimes in La Laguna; that while this band, together with others under Montalan, had a military title and form of military organization, with their chief officers and their subordinates, yet it was, in purpose, a band of bandits, who chiefly dedicated themselves to stealing, robbing, roaming over the highways and mountains, and to the abduction of persons for the securing of money by force and violence; that they were armed bands, armed principally with rifles, revolvers, and bolos, and consisted usually of parties of from ten to fifteen members; that on the third day of September, 1903, two Americans, Joseph G. Hertwick and F. M. Shera, were on their way to Calamba, having a carromata with two horses, and while in the jurisdiction of Lipa, Batangas, they were held up by a band of *ladrones* of whom Aniceto Oruga was in command; that they then took from the American Hertwick three hundred and twenty dollars in American money, and also the two horses and harness after unhitching them from the carromata; that this band that committed this robbery consisted of about fifty persons, about twenty of them being armed, Aniceto Oruga being in command, and to corroborate that, there has been offered in evidence by the prosecution a picture of Oruga taken with a camera at that time.

“The testimony of the prosecution further is that in March, 1904, while a party of Government surveyors were engaged in surveying in the jurisdiction of Calamba,

La Laguna, having with them four Constabulary guards, they were attacked by a large band of *ladrones*, who killed the guard on duty, inflicting bullet and bolo wounds upon him, and wounded another Constabulary guard and one of the Americans and a *muchacho*. This band of *ladrones* then robbed the Constabulary of their guns, haversacks, belts, blankets, uniforms, and clothing, further taking the surveying instrument, compass, surveyor's chain, and book; that the accused Aniceto Oruga was present with this band of *ladrones* and was in command of the attacking force, Julian Montalan also being present, the band consisting of about sixty, mostly armed with guns, revolvers, and bolos.

"Further, that in the month of April, 1904, a part of Aniceto Oruga's band went to Talisay, Province of Batangas, and there made Arcadio Laurel, then president of Talisay, a prisoner; that they took him to the place where their chief, Oruga, was, who sentenced him to death. He was held there a prisoner for two weeks, Oruga finally allowing him to go on his promise to pay to Oruga a certain sum of money; that they took from Arcadio Laurel at this time a satchel and a blanket; that on the night of July 7, 1904, Dominador Delfino, justice of the peace of Cabuyao, La Laguna Province, was taken from his house, and with his brother, Mariano Delfino, and Jose Himedes, was made prisoner by an armed band under command of the accused Aniceto Oruga; that at this time there was also taken by the band a watch belonging to Dominador Delfino, cigars, and eatables, and from a *tienda* in the place a certain amount of goods. Oruga with his band took these three prisoners before Montalan, where Dominador Delfino was sentenced to death, the record of the trial and sentence being submitted in evidence here by the prosecution. The sentence of death was pronounced upon him because he had failed to contribute to Montalan's and Oruga's band when written to do so, and when they sent a second messenger he caused that messenger to be arrested by the Government authorities, and for the further reason that he had accepted office under the American Government in the Philippines and took the oath of fidelity to that Government. After he had been tried and sentenced to death, which was on the next day, July 8, 1904, and the sentence had been approved by Montalan, he, Montalan, appointed Oruga to defend Dominador Delfino; that Oruga then suggested to him that the death sentence would be remitted upon the payment of 10,000 pesos and that failure to pay would cause him to have his tendons cut and two fingers smashed. Afterwards this ransom was lowered to 2,000 pesos, and Mariano Delfino was released in order to go and get it, Oruga

and Montalan taking Dominador Delfino and Jose Himedes with them to the mountains, where they were held as prisoners until August 21, 1904, when they escaped from their captors near Talisay.

“That on August 19, 1904, the accused, Geronimo Rocafor, commanding a party of armed men of the band of Oruga and Montalan, went to the house of Catalino Macasaet, in the jurisdiction of Lipa, where the said Macasaet was sick at that time; that in the presence of his son they made him a prisoner, tying his wrists in front and his elbows to the back, this occurring at night; that thus bound they then started away with Catalino Macasaet as their prisoner, the accused Rocafor telling his son that they were going to kill him; that the next morning the body of Catalino Macasaet was found about half a mile from his house in a field near the side of the road, his hands and elbows tied in the same manner as they were when he left his house, his head severed from his body and bolo wounds on his back; that this was done because Catalino Macasaet was suspected of acting as a *secreto* for the authorities.

“That after this, and in the year 1904, Julian Montalan issued an order directing that the lips be cut off and the tendons cut of an old man, one German Olivares, in the jurisdiction of Santo Tomas, Batangas; that Pedro Calupig, a subordinate officer of Montalan’s, was sent to see that this order was executed; that Pedro Calupig went to Oruga, who saw the order, and some of Oruga’s soldiers went with him and captured German Olivares, carried him into the woods, cut off his tongue, his lips, and the heel tendons of both feet, this old man having these atrocities committed upon him because he was suspected of giving information to the authorities against Montalan’s band.

“That on November 16, 1904, one of these accused, Vicente Linga, then a member of Oruga’s band, went with Pedro Calupig and three other persons, three of the five being armed with revolvers and the other two with bolos, going to the house of one Vicente Africa, who lived with his wife and father-in-law in the barrio of Luta, jurisdiction of Lipa, Batangas; that early in the morning of this day they were seen outside of Vicente Africa’s house, and he, discovering that they were *tulisanes*, jumped from the window and endeavored to escape; that Vicente Linga and the others with him captured Vicente Africa and dragged him back to the road in front of his house, where, in the presence of his wife and father-in-law, they killed him by shooting him five times and inflicting one bolo

wound upon him, then effecting their escape.

“The evidence of the prosecution further is that in the forepart of the year 1905 Aniceto Oruga issued an order in writing sentencing Vicente Macasaet and Gregorio Hernandez, of the Province of Batangas, to be made prisoners and to have their lips cut off and their tendons cut, this order being offered in evidence here, signed by Oruga and with his seal affixed, and is also signed by Geronimo Rocafor and Indalecio Llanes, subordinate officers of Oruga. at that time. This order was issued by Oruga because these parties were suspected of giving information against his band; that another order was issued by Aniceto Oruga, ordering the capture of Francisco Catigbac, of Batangas Province, and the cutting off of his lips and the cutting of his tendons because he refused to contribute to Oruga’s band.

“Such in substance is the evidence of the prosecution. For the defense the accused, Aniceto Oruga, testifies that he was formerly an officer in the insurgent forces here; that in 1902 he was a prisoner in one of the municipal jails of Batangas, and that he was released by General Bell under the amnesty proclamation; that at the time of being released he did not take the oath of allegiance, although this was a prerequisite to a release under that amnesty proclamation; that in the month of May or June, 1903, he, with Montalan, went to La Laguna, where they had a conference with Sakay, and that he there took the oath of allegiance to the Katipunan, which oath was offered in evidence in this case, and that he was given the rank of colonel, and that he came back to the Province of Batangas and did not organize his band until the forepart of the year 1904. He denies that he participated in the robbery of the Americans, Hertwick and Shera, near Lipa in September, 1903, but admits that the hold-up was made while returning from a conference by another officer of Montalan’s who was considerably in the their rear. He admits participating in the fight against the Government surveyors in March, 1904, but says he was only second in command, Montalan being first, and that Montalan ordered the fight. He admits the taking of the guns of the Constabulary and of the field glass by Montalan’s band on this occasion. He admits the capture of Dominador Delfino in the manner testified to by the witnesses for the prosecution, but denies taking the watch, saying that that was taken by Sarmiento, a member of his band, and denies the stealing of the things in the *tienda* the night of the capture of Delfino, but says that he took them and offered the owner a receipt for the amount, but the owner would not

take it. He says that he did not take part in the trial of Delfino when Delfino was sentenced to death, but requested that his sentence be changed and suggested that they cut his tendons. He admits seeing the order to cut off the lips of the old man German Olivares, but says it was from Montalan. He also admits that he sentenced Arcadio Laurel to death, but says that he afterwards had him released on a promise by Arcadio Laurel to pay him 400 pesos, which were not paid. He admits the knowledge of the death of Catalino Macasaet, but says that the capture was made by order of Montalan, and that Macasaet was killed while trying to escape. He admits issuing the orders to cut off the lips and cut the tendons of Vicente Macasaet, Gregorio Hernandez, and; Francisco Catigbac but says these orders were not made of his own free will, but were suggested to him by Indalecio Llanes, who was a subordinate officer in his band, and it was not intended that these orders should be carried out.

“He also says that he issued an order forbidding the people in certain municipalities in his jurisdiction in Batangas to marry unless they paid to him a fine of 35 pesos. This in the year 1905. He did that because the law under which his band and Montalan’s operated provided for it. He says that he had no knowledge or information of the killing of Vicente Africa.

“Further testifying, he says that the first band he organized when he became a member of Montalan’s band was composed of the fugitives or escaped prisoners from the Batangas jail; that he had these fugitives join his band so as to prevent them from doing harm; that his band is not a band of *ladrones*, that they are soldiers with a military organization, working for the interests of their country and against the American Government in the Philippines; that his country is the ‘Universal Democratic Philippine Republic organized in Paris in 1903, and that whatever he has done since he has been in the field has been in compliance with its laws and the carrying out of its orders. He says he is chief in command in Batangas Province, and that his band consisted at times of a large number of men, mostly armed with rifles, revolvers, and bolos; that the law of their organization, which he frequently read to his command, provided that they should treat the people with kindness and set them a good example; that the same law also provided that they should cut off the lips and foot tendons of those who might give information against them, and that he believed that the cutting off of the lips and tendons of this class of people was proper.

“Carlos Oruga, testifying for himself, admits that he was a member of Aniceto Oruga’s band for about one year; that he held the rank of captain; that they had guns and other arms, but says that they had these arms to defend themselves against those who robbed and did bad things against their towns, and also that he surrendered himself voluntarily.

“Geronimo Rocafor, testifying for himself, admits that he was a member of one of the bands of Montalan and Oruga, and says that he reported to Montalan that Catalino Macasaet was a *secreto*, and that Montalan then ordered him to make a prisoner of Macasaet and to bring him before him, Montalan; that he took thirteen armed men and went to the house of Catalino Macasaet, in the municipality of Lipa, at 10 o’clock at night; that he there made Macasaet a prisoner and started to take him to Montalan but says that Macasaet endeavored to escape and that they had a fight with bolos, and Macasaet was killed; and that Macasaet was not tied at any time from when he was made a prisoner up to the time he was killed. He further says that he, Rocafor, was finally captured after being wounded in a fight with the authorities.

“Vicente Linga, testifying for himself, says that he joined the band of Oruga in 1904; that formerly, in August, 1904, he was a prisoner in the jail of Lipa; that he was incarcerated with some others in a room; that he awakened one morning and found that jail empty and found a hole where the others had gone out, and being afraid that the guard would suspect him of trying to escape, he did escape and went to the mountains and joined these bands. He denies that he killed Vicente Africa and says he did not even know him, although admitting that they lived in adjoining barrios.

“Agapito Millar, another witness for the defense, says that he was a member of Oruga’s band, and that Oruga assumed command in 1903.

“Gregorio Mabilangan, a witness for the defense, says he first joined the band of Natividad, then that of Montalan, and later that of Oruga. He admits the cutting off of the lips and tongue and the cutting of the tendons of German Olivares, and says he was a member of Oruga’s band at that time, and that the order to do this cutting came from Montalan.

“The testimony in this case convinces this court beyond the question of a

reasonable doubt that the said four accused are guilty of the crime of bandolerismo. It is shown that in the year 1903 Aniceto Oruga, who the year before had been released under the amnesty proclamation, went with Julian Montalan, notorious as a *ladrone* chieftain, to a conference with one Sakay, also notorious in the Province of La Laguna; that there Aniceto Oruga was given the commission of colonel, and that he there took the oath of the Katipunan, and that he was to be in command as chief of all the bands of *ladrones* operating in Batangas Province, being only second in command to Julian Montalan, who was supreme over all the bands in Batangas and La Laguna, as well as Cavite. While he denied that he participated in the robbery of the Americans in the municipality of Lipa in September, 1903, yet from his own testimony it can be seen that he was a member and one of the officers of a large band under the command of Montalan there at the time. However, this court believes the testimony of the witness for the prosecution, Joseph G. Hertwick, that Aniceto Oruga was actually the one who was in command of these members of the band that committed the robbery.

“He admits that he was present and second in command with Montalan at the attack on the surveying force near Calamba, where one member of the Constabulary was killed and three other persons wounded, and admits the theft of the guns and a field glass at that time; and that he was the officer commanding the force that abducted Dominador Delfino, Mariano Delfino, and Jose” Himedes from their homes in Cabuyao, Province of La Laguna; and that there was theft committed by his band at that time. It is also conclusively proven that he had knowledge of the killing of Catalino Macasaet by members of his band, after he had been abducted from his home; and that he caused to be abducted the president of Talisay, Arcadio Laurel; and that he had knowledge of the order from Montalan to cut off the lips and tendons of German Olivares, and sent several of his band to assist in the capture of this man and the performance of this atrocity; and that he issued orders directing the cutting off of the lips and tendons of Vicente Macasaet, Gregorio Hernandez, and Francisco Catigbac.

“The flimsy claim on the part of the defense, that this was a military organization, and that the members were officers and soldiers fighting for the cause of their country, can not be considered by this court for a moment. When gangs like these under Oruga are organized and arm themselves contrary to law and roam over the country and the mountains and barrios of the provinces, stealing here

and robbing there, abducting persons to commit violence upon them for the purpose of ransom, committing murder at times, threatening law-abiding citizens and driving them from their homes, attacking and killing the authorities, then they are an organization of thieves, robbers, abductors, and murderers, no matter what high-sounding name they may give themselves, and that the organization under Oruga and the other accused in this case was of such a class is proven beyond any doubt by the testimony in this case. Of all the members of this organization operating in the Province of Batangas, the most dangerous was Aniceto Oruga. Practically every crime committed by them was either under his orders or with his knowledge.

“Aniceto Oruga and his band have caused terror and desolation throughout the Province of Batangas for the past two years. He has caused peaceful, law-abiding citizens to be driven from their homes, has threatened others, has abducted and held for ransom still others, and has caused some to be maimed and crippled in a horrible manner for the remainder of their lives. He has stolen Government property and has attacked and killed Government employees. Aniceto Oruga, with his education, with his ability and power of speech, his energy and determination, and the elements of leadership that he has, had he thrown in his lot with that of honest people and endeavored to lead an honorable existence and work for the welfare of his community, would have been a great power for good in the Province of Batangas, and assisted materially in the progress and advancement of the people of his community. Instead of that, his mind has run to crime, and he has devoted all his time and energy to leading a life of criminality, to organizing gangs of thieves and murderers, and preying upon the peaceful communities. Upon him should be meted out the highest penalty under the law.

“Carlos Oruga, one of the other accused, is an ignorant *tao* a man apparently of no force, and yet one inclined to a criminal life. While it has been shown, and he admits, that he was a member of this band and held the rank of captain, yet it does not appear that he actively participated in any affairs of abduction, robbery, or murder. While guilty of *bandolerismo*, the court believes that there should be imposed upon him the minimum penalty provided by law.

“The accused Geronimo Rocafor, it has been shown, was a captain in this organization, that he was an active member of it, and that he was the chief of the gang that abducted and murdered Catalino Macasaet. His claim that Macasaet

was killed while trying to escape, and that Macasaet was not tied, is not believed for a moment by this court. It has been shown by one reliable witness that when Macasaet was made prisoner, his wrists were tied in front and his elbows at the back, and by two reliable witnesses that when his body was found next morning, with his head severed from the body, he was tied in this same manner.

“It has been shown by two reliable witnesses that the accused Vicente Linga was an active participant in the capturing and killing of Vicente Africa.

“The court, therefore, finds the accused Aniceto Oruga, Carlos Oruga, Geronimo Rocafor, and Vicente Linga guilty of the crime of *bandolerismo*, as defined in Act No. 518, as amended by Act No. 1121 of the Philippine Commission, and does sentence the accused Aniceto Oruga to suffer the penalty of death by hanging in the manner provided by law; and does sentence the accused Carlos Oruga to be confined in the Insular penitentiary of the Philippine Islands for a period of twenty years; and does sentence the accused Geronimo Rocafor and Vicente Linga to the penalty of life imprisonment (*cadena perpetua*), and to be incarcerated in the Insular penitentiary of the Philippine Islands for the period of their natural lives; and each to pay one-fourth of the costs of this action.”

After a careful examination of the record, consisting of some 350 pages of testimony and exhibits in writing, we are all of opinion that the facts as found by the trial court are fully sustained by the evidence adduced at the trial and that the appellants are all and each of them guilty of the crime with which they were charged, beyond a reasonable doubt. We find no error in the proceedings prejudicial to the rights of the accused, but we all agree that the penalty which under the law should have been imposed on the accused Geronimo Rocafor was that of death and not that of life imprisonment.

The penalty prescribed for the crime of brigandage is from twenty years' imprisonment to death, and this court, in reviewing the large number of sentences imposed in Courts of First Instance upon persons found guilty of this offense, has in no case affirmed the imposition of capital punishment except in those cases where it appeared that the accused was either an active chief or leader of a band which had committed atrocious and notably heinous offenses or a member of such a band who had taken direct part in murder (*asesinato*) committed by the band while he was a member thereof.

Geronimo Rocafor was conclusively proven to have been one of the chiefs of a notorious

band of brigands, who terrorized the Provinces of Batangas, La Laguna, and Cavite for a period of more than two years. He himself, with a party of bandits under his immediate and personal command, went to the home of one of his neighbors in the nighttime, aroused him from the sick bed in which he was lying, bound him with ropes and in this helpless condition slew him with his own hand; the evidence of record leaves no room for doubt that this cold-blooded murder was deliberately planned by the accused, Geronimo Rocafor, and that it was the outcome of the malignant enmity and vindictive hatred of a wicked and perverse heart.

It was further proven that, at the time when this accused was arrested, there was found on his person an order signed by himself, together with certain other chiefs of his band, directing that the lips and heel tendons of two supposed enemies of the band be cut because it was said that they had given information to the constituted authorities in regard to the existence and operations of the band; and it further appears that this accused undertook to execute still another written order of the chiefs of this band, directing that the lips of another supposed enemy of the bandits be cut off and the tendons of his heels severed, in order to keep him from running to betray the secrets of the band; and, while it does not appear from the evidence that these orders were actually executed, yet it is proven that on other occasions this band had been guilty of just such atrocities and there can be no doubt that this accused conspired with the members of the band to mutilate the persons mentioned in these orders, and was guilty as coconspirator of the actual cutting on0 of the lips and tongue and the severing of the tendons of one German Olivares.

With such evidence of record, we feel it our duty to impose upon this accused the maximum penalty prescribed by law for the offense of which he is convicted.

The judgment and sentence of the trial court in so far as it relates to Aniceto Oruga, Carlos Oruga, and Vicente Linga is affirmed, with a proportionate share of the costs of this instance against each of them; but the judgment and sentence of the trial court, in so far as it relates to Geronimo Rocafor, is reversed, .and this court finds the said Geronimo Rocafor guilty of the crime of brigandage as charged, and sentences the said Geronimo Rocafor to suffer the penalty of death in the manner and form prescribed by law, and to the payment of his proportionate share of the costs in this instance.

After the expiration of ten days let judgment be entered in accordance herewith, and at the proper time thereafter let the record be remanded to the court from whence it came for proper action. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Willard, and Tracey, JJ., concur.

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